

Office of Chief Counsel
Internal Revenue Service

memorandum

TL-N-5454-98
JForsberg

date: March 14, 2000

to: Chief, Examination Division, North Central District
Attn: Roger Eichten, Group Manager, Group 1216

from: District Counsel, North Central District, St. Paul

subject: [REDACTED]
Form 870

Our advice has been requested as to the proper party to execute, and the proper form for, a Form 870 for the [REDACTED] consolidated group's taxable years ending December 31, [REDACTED], and December 31, [REDACTED]. For the reasons discussed, we believe that the Form 870 should be executed on behalf of the old [REDACTED] group by [REDACTED] in the manner set forth below.

FACTS

[REDACTED] (EIN [REDACTED]) ("Old [REDACTED]") was a Delaware corporation which filed consolidated returns as the common parent of a consolidated group (the "[REDACTED]"). [REDACTED] (EIN [REDACTED]) was also a Delaware corporation which filed consolidated returns as the common parent of a consolidated group (the "[REDACTED]"). [REDACTED] was a Delaware corporation and a wholly-owned subsidiary of [REDACTED].

In [REDACTED], [REDACTED] acquired Old [REDACTED] in a transaction intended to be a tax-free reorganization under I.R.C. § 368(a)(1)(A)&(D). On [REDACTED], the stock of Old [REDACTED] was converted into [REDACTED] stock, Old [REDACTED] was merged into [REDACTED] with [REDACTED] being the surviving corporation, and Old [REDACTED] stock was thereupon canceled. Also on [REDACTED], immediately upon the merger becoming effective, [REDACTED] amended its certificate of incorporation to change its name to [REDACTED] ("New [REDACTED]"). Under DEL. CODE, Title 8, § 259(a), [REDACTED], as the surviving corporation in the merger, assumed all liabilities of Old [REDACTED]. The taxpayer has represented that the merger was a reverse acquisition under Treas. Reg. §1.1502-

75(d)(3).¹ Under that regulation, the [REDACTED] would cease to exist, the [REDACTED] would be treated as remaining in existence, and New [REDACTED] would become the new common parent.

DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute waivers. Treas. Reg. § 1.1502-77(a) further provides that its provisions shall apply "whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."

In the present case, the [REDACTED] ceased to exist on [REDACTED] with the reverse acquisition. However, the corporate existence of [REDACTED] the group's parent, continued unabated, albeit under a new name and as the new parent of the [REDACTED]. Accordingly, New [REDACTED] continues as agent for the [REDACTED]'s pre-merger years, notwithstanding that the group itself has ceased to exist. Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993) (where parent continues to exist, parent remains agent for group's consolidated return years). Thus, New [REDACTED] can continue to execute waivers for the [REDACTED]'s pre-merger taxable years (including [REDACTED] and [REDACTED]).

In preparing the Form 870, we suggest that:

1. The taxpayer's name read:

[REDACTED] (EIN [REDACTED]), formerly [REDACTED]
[REDACTED], as agent for the consolidated group*

The following footnote should be put at the bottom of the page:

* with respect to the consolidated income tax liability of [REDACTED] (EIN [REDACTED]).

- 2 The EIN of [REDACTED] ([REDACTED]) should be used as the taxpayer's EIN.

¹ Based on the representations made in the Agreement and Plan of Merger as to the capitalization of [REDACTED] and Old [REDACTED], it appears that the shareholders of Old [REDACTED] would have held a majority of the stock of New [REDACTED] following the merger and that the transaction was in fact a reverse acquisition for purposes of Treas. Reg. § 1.1502-75(d)(3). Agreement and Plan of Merger as Amended and Restated as of [REDACTED], §§ [REDACTED].


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3. The signature block should use name "[REDACTED]" (formerly "[REDACTED]") and should be executed by a current officer of New [REDACTED].

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

REID M. HUEY
District Counsel

By:


JACK FORSBERG
Special Litigation Assistant

cc: Assistant Chief Counsel
(Field Service)